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14 WAL-MART STORES, INC.

15 UNITED STATES DISTRICT COURT
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA

17 IN RE WAL-MART STORES, INC.
18 WAGE AND HOUR LITIGATION

CASE NO. C 06-02069 SBA

CLASS ACTION

**ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE RELATED**

21 This Document Relates To:

22 Case Nos.:
23 C 06-02069 SBA (Smith) and
C 06-05411 SBA (Ballard)

1 **TO THE COURT AND ALL PARTIES AND COUNSEL OF RECORD IN ALL**
 2 **RELATED CASES:**

3 **PLEASE TAKE NOTICE** that, pursuant to Civil Local Rules 3-12 and 7-11, Defendant
 4 Wal-Mart Stores, Inc. (“Wal-Mart”), hereby submits this Administrative Motion to Consider Whether
 5 Cases Should be Related on the grounds that the following three cases are related within the meaning
 6 of Civil Local Rule 3-12:

- 7 • *Bryan, et al. v. Wal-Mart Stores, Inc., et al.* (“*Bryan*”), N.D. Cal. Case No. CV 08-
 8 05221 SI
- 9 • *Rubin v. Wal-Mart Stores, Inc.* (“*Rubin*”), N.D. Cal. Case No. CV 08-4214 SBA
- 10 • *In re Wal-Mart Stores, Inc., Wage and Hour Litigation* (“*Smith/Ballard*”), N.D. Cal.
 11 Case Nos. C 06-02069 SBA & C 06-05411 SBA

12 *Bryan* is a civil action currently pending in the Northern District of California before the
 13 Honorable Susan Illston. Wal-Mart’s registered agent for service of process was served with the
 14 complaint in *Bryan* on or about October 21, 2008. *See* Declaration of G. Charles Nierlich (“Nierlich
 15 Decl.”) **Exhibit A**. On November 19, 2008, Wal-Mart removed the *Bryan* action to the United States
 16 District Court for the Northern District of California. *See* Nierlich Decl. **Exhibit B**. *Smith/Ballard* is
 17 a civil action currently pending before this Court. *See* Nierlich Decl. **Exhibit C**. *Smith/Ballard* was
 18 initially filed as two separate actions, and then consolidated by this Court, long before the complaint
 19 in *Bryan* was filed.

20 This Administrative Motion is made pursuant to Civil Local Rule 3-12(a), which provides that
 21 actions are related when:

- 22 (1) The actions concern substantially the same parties, property, transaction, or event; and
- 23 (2) It appears likely that there will be an unduly burdensome duplication of labor and
 24 expense or conflicting results if the cases are conducted before different judges.

25 On November 11, 2008, this Court granted defendant Wal-Mart’s Administrative Motion To
 26 Consider Whether *Rubin* and *Smith/Ballard* Should Be Related and transferred *Rubin* to this Court.
 27 As Wal-Mart explained in that administrative motion, both *Rubin* and *Smith/Ballard* involve
 28 substantially the same parties. Wal-Mart is a defendant in both cases, and both cases purport to be

1 brought by an overlapping class of plaintiffs, namely, former employees of all Wal-Mart stores in the
 2 State of California. Additionally, both *Rubin* and *Smith/Ballard* appear to involve substantially
 3 similar events and claims. In each case, the overlapping putative class alleges that Wal-Mart has
 4 supposedly miscalculated the amount of monies that Wal-Mart allegedly owes plaintiffs, and that
 5 Wal-Mart has supposedly failed to timely pay plaintiffs upon their terminations. Consequently, this
 6 Court granted Wal-Mart's Administrative Motion and related *Rubin* and *Smith/Ballard*.

7 For similar reasons, *Bryan* is also related to *Rubin* and *Smith/Ballard* within the meaning of
 8 Civil Local Rule 3-12. *Bryan* involves substantially the same parties as *Rubin* and *Smith/Ballard*.
 9 Wal-Mart is a defendant in all three cases. Moreover, plaintiffs in *Bryan* purport to bring suit on
 10 behalf of a subset of current and former employees of Wal-Mart in California – employees who drove
 11 trucks for Wal-Mart. Additionally, plaintiffs in *Bryan* make similar claims to those at issue in *Rubin*
 12 and *Smith/Ballard*. They allege that Wal-Mart failed to provide its truck drivers with meal and rest
 13 periods and failed to pay them certain wages pursuant to California law. Consequently, it seems
 14 likely that there will be an unduly burdensome duplication of labor and expense and/or the possibility
 15 of conflicting results if *Bryan* is conducted before a different Judge than *Rubin* and *Smith/Ballard*.

16 Pursuant to this Court's standing orders, counsel for Wal-Mart has attempted to meet and
 17 confer with counsel for plaintiffs in both the *Smith-Ballard* and *Bryan* actions concerning this
 18 Administrative Motion. Nierlich Decl., ¶ 7. As of the date this Administrative Motion was filed,
 19 counsel for the *Bryan* plaintiffs had not stated a position on the Motion. *Id.* Counsel for the *Smith-*
20 Ballard plaintiffs has stated that they intend to oppose this motion. *Id.*

21 Defendant Wal-Mart respectfully requests that this Court grant this Administrative Motion,
 22 that the *Bryan* action be deemed related to the *Rubin* and *Smith/Ballard* actions, and that the *Bryan*
 23 action be transferred to this Court for further proceedings based on such relatedness.

24 DATED: January 12, 2009

25 Respectfully submitted,

26 GIBSON, DUNN & CRUTCHER LLP

27 By: _____ /s/G. Charles Nierlich
 G. Charles Nierlich

28 Attorneys for Defendant WAL-MART STORES, INC.

DECLARATION OF SERVICE

I, Robin McBain, declare as follows:

I am employed in the County of San Francisco, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 555 Mission St., Ste. 3000, San Francisco, California 94105, in said County and State. On January 12, 2009, I served the within:

ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED; DECLARATION OF G. CHARLES NIERLICH IN SUPPORT THEREOF

to the *Smith-Ballard* parties as follows:

- BY ECF (ELECTRONIC CASE FILING).** I e-filed the above-detailed documents utilizing the United States District Court, Northern District of California's mandated ECF (Electronic Case Filing) service on January 12, 2009. Counsel of record are required by the Court to be registered e-filers, and as such are automatically e-served with a copy of the documents upon confirmation of e-filing.

I also served the within to the below-listed parties as follows:

- BY U.S. MAIL:** I placed a true copy in a sealed envelope addressed to the below-named parties, on the above-mentioned date. I am familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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I certify under penalty of perjury that the foregoing is true and correct, that the foregoing document(s) were printed on recycled paper, and that this Declaration of Service was executed by me on January 12, 2009, at San Francisco, California.

/s:/ Robin McBain
Robin McBain

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